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**In the  
United States Court of Appeals  
For the Second Circuit**

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AUGUST TERM 2013

No. 13-1642-cv

JITENDRA BHATIA, KISHANCHAND BHATIA, JAYSHREE BHATIA,  
MANDAKINI GAJARIA, ABN AMRO LIFE S.A., BAHIA DEL RIO S.A.,  
BEVINGTON MANAGEMENT, LTD., CALWELL INVESTMENT S.A.,  
DIAMOND HILLS INC., HEDGE STRATEGY FUND LLC, KIVORY  
CORPORATION, MIGUEL LOMELI, NORTH CLUB, INC., MORNING MIST  
HOLDINGS LIMITED, PFA PENSION A/S, TAURUS THE FOURTH LTD.,  
ZENN ASSETS HOLDING, LTD., CARLOS MATTOS, CHANDRASHEKAR  
GUPTA, DEEPA GUPTA, ULRICH BLASS, ROBERTO CIOCI, SANDRA  
MARCHI CIOCI, JOHN PAUL DOUGHERTY, E. THOMAS DOUGHERTY  
NOVELLA, MUNIANDY NALAI AH, LILA NEEMBERRY, PETER A. &  
RITA M. CARFAGNA IRREVOCABLE CHARITABLE REMAINDER UNITRUST,  
MOSHE PODHORZER, R. WICKNESWARI V. RATNAM, ENRIQUE SANTOS,  
ENRIQUE SANTOS CALDERON, JACQUELINE URZOLA, JOSEFINA SANTOS  
URZOLA, FELIPE J. BENAVIDES, FUNDACION VIRGILIO BARCO, DAVID  
HOPKINS, CATALINA MEJIA, CESAR MEJIA MEJIA, R.M. RADEMAKER,  
THE ALPHA AND OMEGA PARTNERSHIP, LP, RICHMON COMPANY LTD.,  
POSITANO INVESTMENT LTD., PACIFIC WEST HEALTH MEDICAL CENTER  
INC. EMPLOYEES RETIREMENT TRUST, ON BEHALF OF ITSELF, PACIFIC  
WEST HEALTH MEDICAL CENTER INC. EMPLOYEES RETIREMENT TRUST,  
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, SHIMON LAOR, DAVID  
I. FERBER, FRANK E. PIERCE, FRANK E. PIERCE IRA, NADAV ZOHAR,  
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,  
RONIT ZOHGR, FAIRFIELD SENTRY LTD., HEADWAY INVESTMENT CORP.,  
BPV FINANCE (INTERNATIONAL) LTD., JOSE ANTONIO PUJALS,  
INDIVIDUALLY AND IN THEIR REPRESENTATIVE CAPACITIES FOR ALL

1 THOSE SIMILARLY SITUATED, ROSA JULIETA A DE PUJALS, INDIVIDUALLY  
2 AND IN THEIR REPRESENTATIVE CAPACITIES FOR ALL THOSE SIMILARLY  
3 SITUATED, MARIDOM LIMITED, A FOREIGN CORPORATION, RICARDO  
4 LOPEZ, STANDARD CHARTERED BANK INTERNATIONAL (AMERICAS)  
5 LIMITED, STANCHART SECURITIES INTERNATIONAL, INC., MARIA AKRIBY  
6 VALLADOLID, RICARDO RODRIGUEZ CASO, WONG YUK HING DE LOU,  
7 MOISES LOU MARTINEZ, JOAQUINA TERESA BARBACHA HERRERO, SAND  
8 OVERSEAS LIMITED SAND OVERSEAS LIMITED, BLOCKBEND LTD,  
9 EASTFORK ASSETS LTD, GERICO INVESTMENTS, INC., ALICIA GAVIRIA  
10 RIVERA, EDUARDO CHILD ESCOBAR, MAILAND INEVSTMENT INC.,  
11 ARJAN MOHANDAS BHATIA, TRADWAVES, LTD., PARASRAM DARYANI,  
12 NEELAM P. DARYANI, VIKAS P. DARYANI, NIKESH P. DARYANI,  
13 ASHOKKUMAR DAMODARDAS RAIPANCHOLIA, PRERNA VINOD  
14 UTTAMCHANDANI, KISHIN MOHANDAS BHATIA, SURESH M. BHATIA,  
15 BHARAT MOHANDAS, AARVEE LTD., KISHU NATHURMAL  
16 UTTAMCHANDANI, VANDNA PATEL, RAJESHKUMAR DAMODARDAS  
17 RAIPANCHOLIA, DILIP DAMODARDAS RAIPANCHOLIA, RAJENDRAKUMAR  
18 PATEL, SECURITIES & INVESTMENT COMPANY BAHRAIN, HAREL  
19 INSURANCE COMPANY, LTD., AXA PRIVATE MANAGEMENT,  
20 ST. STEPHEN'S SCHOOL, PACIFIC WEST HEALTH MEDICAL CENTER, INC.  
21 EMPLOYEE'S RETIREMENT TRUST, PASHA S. ANWAR, ON BEHALF OF  
22 THEMSELVES AND ALL OTHERS SIMILARLY SITUATED INVESTORS IN THE  
23 GREENWICH SENTRY, L.P. PRIVATE INVESTMENT LIMITED PARTNERSHIP,  
24 JULIA ANWAR, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY  
25 SITUATED INVESTORS IN THE GREENWICH SENTRY, L.P. PRIVATE  
26 INVESTMENT LIMITED PARTNERSHIP, INTERAMERICAN TRUST,  
27 ELVIRA 1950 TRUST, BONAIRE LIMITED, CARLOS GAUCH, WALL STREET  
28 SECURITIES, S.A., BANCO GENERAL, S.A., HARVEST DAWN  
29 INTERNATIONAL INC., EL PRADO TRADING, OMAWA INVESTMENT  
30 CORPORATION, CARMEL VENTURES LTD., TRACONCORP, BLYTHEL  
31 ASSOCIATED CORP., MARREKESH RESOURCES, CENTRO INSPECTION  
32 AGENCY, KALANDAR INTERNATIONAL, LANDVILLE CAPITAL

1 MANAGEMENT S.A., 20/20 INVESTMENTS, AXA PRIVATE MANAGEMENT  
2 DIVERSIFIED INVESTMENTS ASSOCIATES CLASS A UNITS, ABR CAPITAL  
3 FIXED OPTION/INCOME STRATEGIC FUND LP, HAREL INVESTMENT AND  
4 FINANCIAL SERVICES LTD ., GOPAL BHATIA, THE KNIGHT SERVICES  
5 HOLDINGS LIMITED, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY  
6 SITUATED,

7  
8 *Plaintiffs-Appellees,*

9  
10 *v.*

11  
12 CORINA NOEL PIEDRAHITA, WALTER M. NOEL, JR., ANDRES  
13 PIEDRAHITA, JEFFREY TUCKER, AMIT VIGAYVERGIA, FAIRFIELD  
14 HEATHCLIFF CAPITAL LLC, YANKO DELLAW SCHIAVA, PHILIP TOUB,  
15 LOURDES BARRENECHE, CORNELIS BOELE, VIANNEY D'HENDECOURT,  
16 HAROLD GREISMAN, JACQUELINE HARARY, DAVID HORN, RICHARD  
17 LANDSBERGER, DAVID LIPTON, JULIA LUONGO, MARK MCKEEFRY,  
18 MARIA TERESA PULIDO MENDOZO, CHARLES MURPHY, SANTIAGO  
19 REYES, ANDREW SMITH, FAIRFIELD GREENWICH (BERMUDA) LIMITED,  
20 FAIRFIELD GREENWICH ADVISORS, L.L.C., DANIEL LIPTON, ROBERT  
21 BLUM, GREGORY BOWES, FAIRFIELD RISK SERVICES LTD., FAIRFIELD  
22 GREENWICH LIMITED, A CAYMAN ISLAND COMPANY, FAIRFIELD  
23 GREENWICH GROUP, FAIRFIELD GREENWICH (BERMUDA) LTD.,

24  
25 *Defendants-Appellees,*

26  
27 *v.*

28  
29 CITCO FUND SERVICES (EUROPE) B.V., PRICEWATERHOUSECOOPERS  
30 L.L.P., CITCO FUND SERVICES (BERMUDA) LIMITED, THE CITCO GROUP  
31 LIMITED, CITCO BANK NEDERLAND N.V. DUBLIN BRANCH, CITCO

1 CANADA INC., PRICEWATERHOUSECOOPERS ACCOUNTANTS N.V., CITGO  
2 GLOBAL CUSTODY N.V.,

3  
4 *Defendants-Appellants,*

5  
6 *v.*

7  
8 1-20 JOHN DOES, BRIAN FRANCOUER, PRICEWATERHOUSECOOPERS  
9 BERMUDA, IAN PILGRIM, PRICEWATERHOUSECOOPERS ACCOUNTANTS  
10 NETHERLANDS N.V., LION FAIRFIELD CAPITAL MANAGEMENT LIMITED,  
11 CARLOS GADALA-MARIA, RAUL MAS, ROBERT FRIEDMAN, RODOLFO  
12 PAGES, JOHN G. DUTKOWSKI, LUISA SERENA, MIGUEL CALVO, SAMUEL  
13 PERRUCHOUD, EFG CAPITAL INTERNATIONAL CORP., MATTHEW C.  
14 BROWN, GLOBEOP FINANCIAL SERVICES LLC., GREENWICH SENTRY,  
15 L.P., FAIRFIELD SENTRY LIMITED, PRICEWATERHOUSECOOPERS  
16 INTERNATIONAL LIMITED, PRICEWATERHOUSECOOPERS LLP (US),  
17 PRICEWATERHOUSECOOPERS LLP CHARTERED ACCOUNTANTS,  
18 FAIRFIELD INTERNATIONAL MANAGERS, INC., STANDARD CHARTERED  
19 PLC, AMERICAN EXPRESS BANK LTD, STANDARD CHARTERED PRIVATE  
20 BANK, STANDARD CHARTERED BANK INTERNATIONAL (AMERICAS)  
21 LIMITED, STANDARD CHARTERED BANK, STANDARD CHARTERED BANK  
22 INTERNATIONAL (AMERICAS) LIMITED, FAIRFIELD GREENWICH CORP.,

23  
24 *Defendants.*<sup>1</sup>

25  
26 \_\_\_\_\_  
27  

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<sup>1</sup> The Clerk of Court is respectfully directed to amend the official caption in this case to conform with the caption above

1 Appeal from the United States District Court  
2 for the Southern District of New York.  
3 No. 9-CV-118 — Victor Marrero, *Judge*.

4 \_\_\_\_\_  
5  
6 ARGUED: NOVEMBER 22, 2013  
7 DECIDED: JUNE 26, 2014

8 \_\_\_\_\_  
9  
10 Before: JACOBS, PARKER, AND CHIN, *Circuit Judges*.

11 \_\_\_\_\_  
12 An appeal from a judgment of the United States District Court  
13 for the Southern District of New York (Marrero, *J.*) approving the  
14 settlement of putative class action securities claims against certain  
15 defendants over the objections of non-settling defendants.  
16 Dismissed.

17 \_\_\_\_\_  
18 DAVID A. BARRETT (HOWARD L. VICKERY, II,  
19 STUART H. SINGER, CARLOS SIRES, SASHI BACH  
20 BORUCHOW, Boies, Schiller & Flexner LLP; ROBERT  
21 C. FINKEL, JAMES A. HARROD, Wolf Popper LLP;  
22 CHRISTOPHER LOVELL, VICTOR E. STEWART, Lovell  
23 Stewart Halebian Jacobson LLP, *on the brief*),  
24 Boies, Schiller & Flexner LLP, New York, NY, *for*  
25 *Plaintiffs-Appellees*.

26 MARK G. CUNHA, Simpson Thacher & Bartlett  
27 LLP, New York, NY, *for Defendants-Appellees*.

1 CHRISTOPHER LANDAU (TIMOTHY A. DUFFY, EMILY  
2 P. HUGHES, Kirkland & Ellis LLP; WILLIAM R.  
3 MAGUIRE, SARAH L. CAVE, Hughes Hubbard &  
4 Reed LLP; WALTER RIEMAN, Paul, Weiss, Rifkind,  
5 Wharton & Garrison LLP, *on the brief*) Kirkland &  
6 Ellis LLP, Washington, DC, *for Defendants-*  
7 *Appellants.*

8

9 BARRINGTON D. PARKER, *Circuit Judge:*

10 This appeal requires us once again to grapple with the  
11 aftermath of the Ponzi scheme run by Bernard L. Madoff.  
12 Defendants-Appellants PricewaterhouseCoopers and Citco<sup>2</sup>  
13 (collectively, the “Non-Settling Defendants”) seek to overturn a  
14 partial final judgment entered in the United States District Court for  
15 the Southern District of New York (Marrero, J.) approving the  
16 settlement of certain putative class action claims. The settled claims  
17 were brought by Plaintiffs-Appellees (the “Investor Plaintiffs”) who  
18 were individual and institutional investors in so-called Madoff  
19 feeder funds managed by the Fairfield Greenwich Group.<sup>3</sup> The  
20 claims were brought against the Group as well as its directors and

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<sup>2</sup> “PricewaterhouseCoopers” consists of defendants PricewaterhouseCoopers LLP [Canada] and PricewaterhouseCoopers Accountants Netherlands N.V. “Citco” consists of defendants Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Ltd., and The Citco Group Limited.

<sup>3</sup> The Fairfield Greenwich Group includes funds managed by Fairfield Greenwich (Bermuda) Limited, Fairfield Greenwich Advisors, L.L.C., Fairfield Risk Services LTD., Fairfield Greenwich Limited, Fairfield Greenwich Group, Fairfield Greenwich (Bermuda) LTD.

1 officers (collectively, the “Fairfield Greenwich Defendants” or the  
2 “Settling Defendants”).

3 The Non-Settling Defendants challenge one particular  
4 provision in the settlement agreement that provides that investors  
5 who file claims under the settlement submit to the district court’s  
6 jurisdiction for the sole purpose of participating in the settlement  
7 and not for any other purpose. The Non-Settling Defendants  
8 contend that the district court erred in approving this provision  
9 because district courts cannot permit litigants to agree to insulate  
10 themselves from personal jurisdiction if it would otherwise be  
11 created as a result of the settlement.

12 In response, the Investor Plaintiffs contend, among other  
13 things, that the Non-Settling Defendants lack standing to lodge this  
14 objection. The Non-Settling Defendants counter that they have  
15 standing because the provision in question prejudices their rights to  
16 assert that participation in the settlement should bar or limit investor  
17 claims against them in other litigation. Because we conclude that the  
18 Non-Settling Defendants do not have standing to challenge the  
19 settlement, we dismiss the appeal.

20

## I.

21 Plaintiffs-Appellees invested money in funds sponsored and  
22 managed by the Fairfield Greenwich Group, which in turn invested  
23 substantially all of its assets with Bernard L. Madoff Investment  
24 Securities LLC. After discovering that their investments were lost as  
25 a result of Madoff’s fraudulent scheme, Investor Plaintiffs brought a  
26 putative class action asserting federal securities and state common  
27 law claims against the Fairfield Greenwich Defendants, their outside  
28 public accountants, PricewaterhouseCoopers, and Citco and

1 GlobeOp Financial Services, LLC,<sup>4</sup> which provided various  
2 professional services to the funds. In addition to restitution of the \$5  
3 billion Investor Plaintiffs alleged that they, as a class lost, as a result  
4 of Madoff's fraudulent scheme, the complaint sought consequential  
5 and punitive damages as well as disgorgement of profits  
6 purportedly obtained by the defendants.

7 Following protracted motion practice,<sup>5</sup> the Investor Plaintiffs  
8 and the Fairfield Greenwich Defendants engaged in settlement  
9 negotiations and in November 2012 moved for the preliminary  
10 approval of a settlement they had reached. The settlement  
11 purported to resolve all claims between the Investor Plaintiffs and  
12 the Fairfield Greenwich Defendants.

13 As Plaintiffs' motion for class certification had not been  
14 adjudicated,<sup>6</sup> the proposed preliminary approval order defined a  
15 settlement class (the "Settlement Class")<sup>7</sup> and provided that its  
16 members had the right to request exclusion from the class. The

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<sup>4</sup> Defendant GlobeOp Financial Services, LLC has entered into its own settlement with Plaintiffs. *See* Dist Ct. No. 09-118, Dkt. 1232.

<sup>5</sup> *See, e.g., Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 354 (S.D.N.Y. 2010); *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372 (S.D.N.Y. 2010).

<sup>6</sup> In February 2013, the district court granted in part and denied in part Plaintiffs' motion for class certification, excluding from the class investors in 25 countries, which it found had not been shown likely to give preclusive effect to an opt-out class judgment. *Anwar v. Fairfield Greenwich Ltd.*, 289 F.R.D. 105, 121 (S.D.N.Y. 2013). This court recently vacated the class certification order as to claims against the Non-Settling Defendants and remanded for further findings on the Rule 23 requirements as they pertain to the claims asserted against each of the Non-Settling Defendants. *See Anwar v. Fairfield Greenwich Ltd.*, Nos. 13-2340, 13-2345, 2014 U.S. App. LEXIS 11515 (June 19, 2014).

<sup>7</sup> The Settlement Class was defined principally as "all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record) and who suffered a Net Loss of principal invested in the Funds." *See* Joint App'x 273.



1 proposed order also provided that those investors who wished to  
2 remain in the class could file proofs of claim in order to share in the  
3 distribution of the settlement proceeds.

4 Paragraph 17 of the proposed order further provided that  
5 Settlement Class members who filed proofs of claim would submit  
6 to the district court's jurisdiction as follows:

7 Any Settlement Class Member who submits a Request for  
8 Exclusion or a Proof of Claim thereby submits to the  
9 jurisdiction of the Court with respect to the subject matter  
10 thereof and all determinations made by the Court thereon.

11 Joint App'x 311 ¶ 17.

12 Following the filing of the motion for preliminary approval of  
13 the settlement, the putative class representatives were approached  
14 by several putative Settlement Class members who expressed  
15 concern that, as foreign individuals and entities, participation in the  
16 Settlement Class could subject them to clawback actions in United  
17 States courts by Irving Picard, the SIPC Trustee for Bernard L.  
18 Madoff Investment Securities, LLC, and Kenneth Krys, the court-  
19 appointed Liquidator of Fairfield Sentry Ltd., seeking to recover  
20 monies they may have directly or indirectly received through the  
21 Fairfield Greenwich Group from Madoff. In response to these  
22 concerns, on the eve of the preliminary approval hearing, the  
23 settling parties submitted an amended proposed order purporting to  
24 limit the district court's jurisdiction over Settlement Class members.  
25 Paragraph 17 of the preliminary approval order was amended to  
26 state in relevant part:

27 [A]ny Settlement Class Member who submits a Proof of  
28 Claim thereby submits to the jurisdiction of this Court with

1           respect only to the subject matter of such Proof of Claim and  
2           all determinations made by this Court thereon *and shall not*  
3           *be deemed to have submitted to the jurisdiction of this Court*  
4           *or of any court in the United States for any other matter on*  
5           *account of such submission.*

6    Joint App'x 415 ¶ 17 (emphasis added).

7           At the hearing, the Non-Settling Defendants objected to the  
8           amended language on the ground that class members who  
9           submitted to the court's jurisdiction in order to accept the terms of  
10          the settlement could not, at the same time, be permitted to limit the  
11          legal consequences of doing so. The Non-Settling Defendants  
12          contended that they were currently facing claims in litigation in the  
13          Netherlands and were entitled to argue that any entity that  
14          participated in the New York settlement could not pursue claims in  
15          any other jurisdiction. The district court overruled the objections  
16          and approved the amended preliminary settlement order.

17          Following the end of the notice period, the Investor Plaintiffs  
18          moved for final approval of the settlement. Over the objections of  
19          the Non-Settling Defendants, the district court entered the final  
20          order approving the settlement and entering partial final judgment  
21          with respect to Investor Plaintiffs' claims against the Fairfield  
22          Greenwich Defendants (the "Final Order"). Paragraph 28 of the  
23          Final Order contained language identical to paragraph 17 of the  
24          amended preliminary order providing that Settlement Class  
25          members who submit proofs of claim only submit to the jurisdiction  
26          of the district court with respect to the subject matter of the proof of  
27          claim. Special App'x 13. This appeal followed.

1

## II.

2 Plaintiffs contend that the Non-Settling Defendants do not  
3 have standing to appeal the Final Order. The question of standing is  
4 a “threshold determinant[ ] of the propriety of judicial intervention.”  
5 *Warth v. Seldin*, 422 U.S. 490, 518 (1975). Although we generally  
6 review a district court’s approval of a settlement for abuse of  
7 discretion, *McReynolds v. Richards-Cantave*, 588 F.3d 790, 800 (2d Cir.  
8 2009), we review *de novo* the issue of whether the Non-Settling  
9 Defendants have standing to bring this appeal, *see Denney v.*  
10 *Deutsche Bank AG*, 443 F.3d 253, 262 (2d Cir. 2006); *Shain v. Ellison*,  
11 356 F.3d 211, 214 (2d Cir. 2004).

12 Over the years, the Supreme Court has articulated the  
13 standard by which the “irreducible constitutional minimum of  
14 standing” is established. *Lexmark Int’l, Inc. v. Static Control*  
15 *Components, Inc.*, 572 U. S. \_\_\_, 134 S. Ct. 1377, 1386 (2014) (quoting  
16 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). A party must  
17 have suffered an injury-in-fact, that is, the invasion of a “legally  
18 protected interest” in a manner that is “concrete and particularized”  
19 and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504  
20 U. S. at 560 (internal quotation marks omitted). Moreover, the injury  
21 must be “fairly traceable” to the alleged conduct and it must be  
22 likely that the injury will be redressed by a favorable decision. *Id.* at  
23 560-61.

24 The standing requirements ensure that judicial resources are  
25 “devoted to those disputes in which the parties have a concrete  
26 stake.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S.  
27 167, 191 (2000). Consequently, we have observed that a non-settling  
28 defendant generally lacks standing to object to a court order  
29 approving a partial settlement because a non-settling defendant is

1 ordinarily not affected by such a settlement. *Zupnick v. Fogel*, 989  
2 F.2d 93, 98 (2d Cir. 1993). This rule advances the policy of  
3 encouraging the voluntary settlement of lawsuits. *See id.*; *Waller v.*  
4 *Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987).

5 However, there is a recognized exception to this general rule  
6 which permits a non-settling defendant to object where it can  
7 demonstrate that it will sustain some formal legal prejudice as a  
8 result of the settlement. *Zupnik*, 989 F.2d at 98; *see also Smith v.*  
9 *Arthur Andersen LLP*, 421 F.3d 989, 998 (9th Cir. 2005); *Weinman v.*  
10 *Fid. Capital Appreciation Fund (In re Integra Realty Res., Inc.)*, 262 F.3d  
11 1089, 1102 (10th Cir. 2001); *In re Vitamins Antitrust Class Actions*, 215  
12 F.3d 26, 31 (D.C. Cir. 2000); *Eichenholtz v. Brennan*, 52 F.3d 478, 482  
13 (3d Cir. 1995); *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247-48  
14 (7th Cir. 1992).

15 The Non-Settling Defendants contend that paragraph 28 of the  
16 Final Order causes them such prejudice because it “*effectively* strips  
17 them of defenses against the settling plaintiffs in other fora,  
18 including defenses based on duplicative litigation and preclusion.”  
19 Brief of Defendants-Appellants (“App. Br”) at 11 (emphasis added).  
20 This allegation, however, does not rise to the required level of formal  
21 legal prejudice necessary for standing. That level exists only in those  
22 rare circumstances when, for example, the settlement agreement  
23 *formally* strips a non-settling party of a legal claim or cause of action,  
24 such as a cross-claim for contribution or indemnification, invalidates  
25 a non-settling party’s contract rights, or the right to present relevant  
26 evidence at a trial. *See Denney*, 443 F.3d at 273 (reviewing challenge  
27 where settlement included a bar order prohibiting claims against  
28 settling defendants); *Gerber v. MTC Elec. Techs. Co., Ltd.*, 329 F.3d 297,  
29 305 (2d. Cir. 2003); *see also Alumax Mill Prods., Inc. v. Congress Fin.*  
30 *Corp.*, 912 F.2d 996, 1002 (8th Cir. 1990) (finding standing where

1 settlement dismissed cross-claims with prejudice); *Dunn v. Sears,*  
2 *Roebuck & Co.*, 639 F.2d 1171, 1173–74 (5th Cir. 1981) (reviewing  
3 challenge where settlement made potential witnesses unavailable to  
4 remaining defendants).

5         Nothing in the Final Order precludes the Non-Settling  
6 Defendants from asserting in the district court or in other litigation  
7 any claims or defenses that may be available to them. Similarly,  
8 nothing in that order requires that they forbear from asserting in the  
9 Dutch proceedings, or in any future proceedings in other courts, that  
10 participation in the settlement approved by the district court bars  
11 subsequent or parallel proceedings. *See Zupnick*, 989 F.2d at 98-99  
12 (expressing skepticism that non-settling defendants claims were  
13 foreclosed where the stipulations of settlement purported to  
14 extinguish “any and all claims . . . that have been, could have been,  
15 or in the future might be asserted” by non-settling defendants,  
16 because the agreements were not binding on them). The Non-  
17 Settling Defendants implicitly concede as much stating: “Paragraph  
18 28 *undercuts* that argument, as well as appellants’ ability to invoke  
19 preclusion defenses in the Dutch actions (or any other actions) based  
20 on the outcome of this case.” App. Br. at 13 (emphasis added). It is  
21 not, however, sufficient for the Non-Settling Defendants to show  
22 that they were somehow “undercut” through the loss of some  
23 practical or strategic advantage. As we have stated, to succeed they  
24 must show formal legal prejudice. They have not done so.

25         Finally, we note that the Non-Settling Defendants have  
26 already invoked the “preclusion defenses” in the Dutch proceedings.  
27 To us, that is a significant demonstration that nothing in the Final  
28 Order prevents or limits them from continuing to assert that  
29 Settlement Class members’ participation in the settlement bars,  
30 limits, or otherwise impacts claims against them in other

1 jurisdictions. Moreover, in any proceedings to which they are  
2 proper parties, the Non-Settling Defendants are free to argue that  
3 paragraph 28 of the Final Order is invalid and lacks preclusive effect  
4 against them.

5 In reaching this result, we join our sister courts in holding that  
6 a settlement which does not prevent the later assertion of a non-  
7 settling party's claims (although it may spawn additional litigation  
8 to vindicate such claims), does not cause the non-settling party  
9 "formal" legal prejudice. See, e.g., *Agretti*, 982 F.2d at 247-48  
10 (concluding that a party did not have standing to challenge a  
11 settlement agreement in which a co-defendant agreed to declare the  
12 contract void because the non-settling party retained the right to  
13 assert that the contract was valid and enforceable, despite the  
14 obvious practical burden of having its contractual partner disavow  
15 the contract); *New Mexico ex rel. Energy & Minerals Dep't v. U.S. Dep't*  
16 *of Interior*, 820 F.2d 441, 444-45 (D.C. Cir. 1987) (holding that the  
17 Navajo Tribe's challenge to a provision of a settlement which  
18 purported to clarify the Secretary's position on whether allotments  
19 to individual Indians of lands which lie outside the undisputed  
20 boundaries of the Navajo Reservation were "Indian lands" was  
21 properly dismissed because the Tribe was not bound by the  
22 settlement and the Tribe could raise their legal objections in  
23 subsequent litigation).

24 For these reasons, we conclude that the Non-Settling  
25 Defendants do not have standing to object to the settlement. In view  
26 of this conclusion, we decline to address the remaining issues  
27 argued on appeal.

## 28 CONCLUSION

29 We dismiss the appeal for lack of standing.